

IN THE CLAIMS

Please cancel Claims 1-19 in favor of the following new claims.

--20. A recombinant DNA construct capable of transcription in a plant cell comprising, in the 5' to 3' direction of transcription, a figwort 34S promoter and a DNA sequence of interest heterologous to said promoter.

21. The recombinant DNA construct of Claim 20 further comprising a transcript termination region functional in a plant cell downstream of said DNA sequence of interest.

22. The recombinant DNA construct of Claim 21 wherein said transcript termination region is from the 3' untranslated end of the mannopine synthase gene.

23. The recombinant DNA construct of Claim 20 wherein said figwort 34S promoter comprises a TATA box having the sequence TATTTAA.

24. The recombinant DNA construct of Claim 20 wherein said figwort 34S promoter comprises at least approximately 383bp upstream of the BamHI site at nucleotides 1078 to 1084 of Figure 4.

25. The recombinant DNA construct of Claim 20 wherein said figwort 34S promoter comprises at least approximately 549bp upstream of the BamHI site at nucleotides 1078 to 1084 of Figure 4.

26. The recombinant DNA construct of Claim 20 wherein said promoter comprises at least approximately 1.1 kb

*Sub D2*  
upstream of the BamHI site at nucleotides 1078 to 1084 of Figure 4.

27. The recombinant DNA construct of Claim 20 wherein said DNA sequence of interest is a structural gene.

28. The recombinant DNA construct of Claim 20 wherein said DNA sequence of interest is an anti-sense DNA sequence.

*A2 cons*  
29. The recombinant DNA construct of Claim 20 further comprising a CaMV 35S promoter construct, said CaMV 35S promoter construct comprising, in a 5' to 3' direction, a CaMV 35S promoter and a second DNA sequence of interest.

30. The recombinant DNA construct of Claim 29 wherein said second DNA sequence of interest is different from said DNA sequence of interest. *Sub 62*

31. The recombinant DNA construct of Claim 29, wherein said CaMV 35S promoter cassette further comprises a transcript termination region functional in a plant cell.

32. The recombinant DNA construct of Claim 21 further comprising a CaMV 35S promoter construct, said CaMV 35S construct comprising, in a 5' to 3' direction, a CaMV 35S promoter, a second DNA sequence of interest, and a transcript termination region functional in a plant cell, wherein said said transcript termination region of said CaMV 35S promoter construct is different from said transcript termination region of said figwort 34S promoter construct.

*Sub B5*  
33. The recombinant DNA construct of Claim 20 further comprising a 5' untranslated leader sequence.

Sub B5  
34. The recombinant DNA construct of Claim 33, wherein said 5' untranslated sequence is from a figwort mosaic virus 34S promoter.

35. A plant cell comprising a recombinant DNA construct of any one of Claims 20-34.

36. A plant comprising a recombinant DNA construct of any one of Claims 20-34.

37. A method of modifying the phenotype of a plant comprising the steps of  
growing a plant having in its genome a recombinant DNA construct comprising, in a 5' to 3' direction, a figwort 34S promoter and a DNA sequence of interest heterologous to said promoter, whereby the transcription of said DNA sequence of interest results in a modified plant phenotype.

38. The method of Claim 37 wherein said recombinant DNA construct further comprises a transcript termination region functional in a plant.

39. A method of providing for constitutive transcription of a DNA sequence of interest in a plant wherein transcription of said sequence is under the regulatory control of a caulimovirus promoter comprising a figwort 34S promoter.

40. A method of providing for constitutive expression of a DNA sequence of interest in a plant wherein expression of said sequence is under the regulatory control of a caulimovirus promoter comprising a figwort 34S promoter.

41. A method of providing for the transcription of more than one DNA sequence of interest in a plant cell, wherein a first DNA sequence of interest is under the regulatory control of a CaMV 35S promoter and a second DNA sequence is under the regulatory control of a different promoter having a similar level of transcription as said CaMV 35S promoter comprising

growing a plant cell having integrated in its genome a DNA construct of Claim 29.

42. A method for providing CaMV 35S-like transcription levels of a DNA sequence of interest in a plant cell without relying upon a CaMV 35S promoter, the improvement comprising

growing a plant cell having a recombinant DNA construct of Claim 1.--

#### REMARKS

Claims 1-19 have been cancelled in favor of new Claims 20-40. New Claims 20-21 find support in Claims 5-6 as filed. New Claim 22 finds support at page 9, lines 11-22. New Claims 23-26 clarify the subject matter of Claims 8-10 as filed, and find additional support in Figure 4, and in the specification at page 8, line 14 to page 9, line 10. New Claims 27-32 find support in Claims 11-15 as filed. New Claims 33-34 find support in the specification at page 22, lines 2-3 and at page 6, lines 15-19. Claims 35-38 find support in Claims 16-19 as filed. Support for Claims 39 and 40 is inherent in language found in the specification, for